

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

----- In the Matter of -----)
PUBLIC UTILITIES COMMISSION)
Instituting a Proceeding to)
Investigate the Issues and)
Requirements Raised by, and)
and Contained in, Hawaii Revised)
Statutes 486H, as Amended.)
_____)

DOCKET NO. 05-0002

ORDER NO. 21525

Filed Jan. 4, 2005
At 11 o'clock A.M.

Harun Hignel.
Chief Clerk of the Commission

DIV. OF CONSUMER ADVOCACY
DEPT. OF COMMERCE AND
CONSUMER AFFAIRS
STATE OF HAWAII

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| Statutes 486H, as Amended.) | |
| _____) | |

ORDER

I.

Purpose of Investigation

The purpose of this investigation is to examine the issues and requirements raised by, and contained in, Hawaii Revised Statutes ("HRS") Chapter 486H, as amended. During the 2002 Legislative session, the Legislature enacted Act 77, Session Laws of Hawaii 2002, now codified as HRS Chapter 486H and which established maximum pre-tax wholesale and retail prices on regular unleaded gasoline to be sold in the State of Hawaii. In 2004, the Legislature enacted Act 242, Session Laws of Hawaii 2004 ("Act 242"), which amended HRS Chapter 486H by, among other things: (1) changing the baseline for determining maximum pre-tax wholesale gasoline prices by using the average of the spot prices for regular unleaded gasoline for the markets of New York Harbor, the United States Gulf Coast, and Los Angeles; (2) extending maximum pre-tax wholesale price limits to mid-grade and premium gasoline; (3) repealing the maximum pre-tax retail gasoline

price; (4) establishing zones within the State and authorizing the public utilities commission to adjust the maximum pre-tax wholesale gasoline prices in the various zones; (5) extending the effective date for the imposition of the maximum pre-tax wholesale gasoline price limit to September 1, 2005; and (6) making an appropriation, to be expended by the public utilities commission, to carry out the purposes of Chapter 486H and Act 242.

Through this docket, the commission intends to examine the issues and requirements raised by, and contained in, HRS Chapter 486H, particularly Act 242. These issues and requirements include, but are not limited to:

1. Examining the effect, impact, and appropriateness of the baseline price as defined in HRS § 486H-13(c), as amended, and examining options as to a more appropriate baseline or a more appropriate reporting service, if any.
2. Examining the effect, impact, and appropriateness of the location adjustment factor established by HRS § 486H-13(d), as amended, at \$.04 per gallon, and examining options as to a more appropriate location adjustment factor, if any.
3. Examining the effect, impact, and appropriateness of the marketing margin factor established by HRS § 486H-13(e), as amended, at \$.18 per gallon, and examining options as to a more appropriate marketing margin factor, if any.

4. Examining the effect, impact, and appropriateness of the mid-grade adjustment factor established in HRS § 486H-13(f), as amended, at \$.05 per gallon, and examining options as to a more appropriate mid-grade adjustment factor, if any.
5. Examining the effect, impact, and appropriateness of the premium adjustment factor established by HRS § 486H-13(g), as amended, at \$.09 per gallon, and examining options as to a more appropriate premium adjustment factor, if any.
6. Determining the types of documents, data, and information manufacturers, wholesalers, or jobbers must furnish to the commission to make determinations on zone price adjustments. HRS § 486H-13(h), as amended.
7. Analyzing zone price adjustments to the maximum pre-tax wholesale regular unleaded, mid-grade, and premium gasoline prices and examining the effect, impact, and appropriateness on a zone by zone basis. HRS § 486H-13(i), as amended.
8. Determining the types of documents, data, and information necessary for the commission to determine whether the manufacturer, wholesaler, or jobber is complying with any requirement imposed or rule adopted, pursuant to HRS Chapter 486H. HRS § 486H-13(j), as amended.
9. Identifying any further adjustments necessary to establish maximum pre-tax wholesale gasoline prices

that reflect and correlate with competitive market conditions. HRS § 486H-16(c), as amended.

In light of the nature and scope of this investigation and to assist the commission in the development of a sound record in this proceeding, the commission finds it necessary to make Chevron U.S.A. Inc. ("Chevron") and Tesoro Hawaii Corporation ("Tesoro") parties to this proceeding. Pursuant to Hawaii Administrative Rules ("HAR") § 6-61-62, the Division of Consumer Advocacy, Department of Commerce and Consumer Affairs ("Consumer Advocate") is an *ex officio* party to any proceeding before the commission.¹

Furthermore, pursuant to Section 8 of Act 242, the commission has retained professional consultants, ICF Associates, LLC, a consulting member company to ICF Consulting ("ICF"), to assist the commission in its investigation in this matter. ICF is a provider of policy, technology, and management consulting services to government, industry, and non-governmental organizations.² Subsequent to the issuance of this order and consistent with the authorities provided in Act 242, the commission immediately anticipates issuing requests for documents, data, and information to manufacturers, wholesalers and jobbers that it believes are necessary and appropriate for

¹See also, HRS § 269-51 ("As consumer advocate, the director of commerce and consumer affairs shall have full rights to participate as a party in interest in all proceedings before the public utilities commission").

²The project manager for ICF in this matter is Tom O'Connor. Oversight of the whole project will be provided by Ms. Zeta Rosenberg.

purposes of this investigation. To establish a set of procedures and provisions pertaining to the use and disclosure of documents, data, and information considered to be confidential to manufacturers, wholesalers, jobbers or other entities, the commission also intends to issue a protective order, pursuant to HAR § 6-61-50, subsequent to the issuance of this order.

II.

Investigative Authority

HRS § 486H-16(c) authorizes the commission to make adjustments deemed necessary and appropriate to establish maximum pre-tax wholesale gasoline prices that reflect and correlate with competitive market conditions. Specifically, HRS § 486H-13 authorizes the commission: (1) to examine options as to a more appropriate baseline or a more appropriate reporting service, if any³; (2) to examine options as to a more appropriate location adjustment factor, if any⁴; (3) to examine options as to a more appropriate marketing margin factor, if any⁵; (4) to examine options as to a more appropriate mid-grade adjustment factor, if any⁶; (5) to examine options as to a more appropriate premium adjustment factor, if any⁷; (6) to determine the type of documents, data, and information the manufacturers, wholesalers,

³See HRS § 486H-13(c).

⁴See HRS § 486H-13(d).

⁵See HRS § 486H-13(e).

⁶See HRS § 486H-13(f).

⁷See HRS § 486H-13(g).

or jobbers must furnish to the commission to make a determination on zone price adjustments and analyze the appropriateness of price adjustments on a zone by zone basis⁸; and (7) to determine the type of documents, data, and information necessary for the commission to determine whether the manufacturer, wholesaler, or jobber is complying with any requirement imposed or rule adopted, pursuant to HRS Chapter 486H.⁹

Hawaii Administrative Rules ("HAR") § 6-61-71 also provides that the commission may, at any time, investigate matters subject to its jurisdiction.¹⁰ Accordingly, pursuant to the above-mentioned authorities, the commission will institute a proceeding to examine the issues and requirements raised by, and contained in, HRS chapter 486H, as amended. HAR Chapter 6-61, Rules of Practice and Procedure before the Public Utilities Commission, will apply to this proceeding.

Any individual, entity, or organization desiring to intervene as a party or to participate without intervention in this proceeding shall file a motion to intervene or participate without intervention not later than twenty (20) days from the filing of this order. Motions to intervene or participate without intervention must comply with all applicable rules of HAR Chapter 6-61. Subsequent to determining the parties and participants in this docket, the commission will issue an order establishing, among other things, the schedule of proceedings,

⁸See HRS § 486H-13(i).

⁹See HRS § 486H-13(j).

¹⁰See also, HRS §§ 269-7 and 269-15.

issues, hearing date(s), if any, and other procedures needed to govern the instant proceeding.

III.

Orders

THE COMMISSION ORDERS:

1. A proceeding is instituted to examine the issues and requirements raised by, and contained in, HRS Chapter 486H, as amended.

2. Chevron and Tesoro shall be parties to this proceeding.

3. Within twenty (20) days of the date of this order, interested persons or entities shall file motions to intervene or participate without intervention, pursuant to HAR Chapter 6-61.

DONE at Honolulu, Hawaii January 4, 2005.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By Carlito P. Caliboso
Carlito P. Caliboso, Chairman

By (EXCUSED)
Wayne H. Kimura, Commissioner

APPROVED AS TO FORM:

Kevin M. Katsura
Kevin M. Katsura
Commission Counsel

By Janet E. Kawelo
Janet E. Kawelo, Commissioner

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No. 21525 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

DIVISION OF CONSUMER ADVOCACY
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
P. O. Box 541
Honolulu, HI 96809

TESORO HAWAII CORPORATION
c/o THE CORPORATION COMPANY, INC.
1000 Bishop Street
Honolulu, HI 96813

CHEVRON U.S.A. INC.
c/o PHCS HAWAII, INC.
Ste 1600 Pauahi Tower
1001 Bishop Street
Honolulu, HI 96813



Karen Higashi

DATED: January 4, 2005